

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
January 6, 2004 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Robert O. Burch, Jr. Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
RF = Recovery Fund Claim

C = Complainant/Claimant
R = Respondent/Regulant
W = Witness
AT = Attorney

Participants

1. William Cascio
t/a Cascio Construction
File Number 2003-02020 (Disc)
2. Debra M. Belew
t/a Construction R Us
File Number 2003-01419 (Disc)
3. James Dollins
t/a Landscapes Utilities Unlimited
File Number 2003-03039 (Disc)
4. Davendra Merhai
t/a D & N Construction
File Number 2003-01048 (Disc)
5. Battle Oil Company Inc.
File Number 2003-01659 (Disc)
No Decision Made

Cascio – R
Heschel Keller – AT
Dennis Simms – C
Elizabeth Simms - C
Joseph Tomsic – W

Belew – R
Ryan Emanuel – C
Jack Rice - W

None

None

Carolyn Battle – R
James Battle - W
Robert Robey – C

6. Steven Johnson
t/a Albemarle Enterprises
File Number 2003-03235 (Disc)
No Decision Made

Sara Johnson – C

7. Frederick C. Taylor
t/a Heavy's
File Number 2003-02577 (Disc)

None

8. Frederick C. Taylor
t/a Heavy's
File Number 2003-02565 (Disc)

None

9. Eddie Yates
t/a E W Yates
File Number 2002-03801 (Disc)

Yates - R

10. David W. May Sr.
t/a Virginia Remodeling
File Number 2003-00050 (Disc)

May – R

11. Weather Guard Constructions
File Number 2003-01855 (RF)

William Anderson - C

The meeting adjourned at 4.35 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

In Re:

William J Cascio, t/a Cascio Construction
Monroe, VA 24574

File Number 2003-02020
License Number 2705022643

CONSENT ORDER

Respondent William J Cascio, t/a Cascio Construction ("William J Cascio") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705022643).

As a result of this status, William J Cascio recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on January 6, 2004 in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended. This IFF was held in Richmond, Virginia and was attended by William Cascio, the Respondent; Heschel Keller, his Attorney; Elizabeth Simms and Dennis Simms, Complainants; and Joseph Tomsic, Bedford County Building Official. Board Member Robert O. Burch, Jr. presided at the IFF.

The Board's duly designated representative has found sufficient evidence to believe that:

On July 12, 2001, Dennis and Elizabeth Simms ("the Simms") entered into a contract with Cascio, in the amount of \$237,000.00, to construct a residence at 102 Deep Spring Circle, Forest, Virginia.

On January 22, 2002, a Certificate of Occupancy was issued to the Simms for the home constructed at 102 Deep Spring Circle, Forest, Virginia.

Summation of Facts

1. Cascio failed to sign the contract and obtain the Simms' signatures prior to commencement of work.
 2. Cascio failed to clearly specify the terms and conditions of the work to be performed in the contract.
 3. On March 13, 2002, the Simms sent Cascio a punch list of items to be repaired. On March 14, 2002, Cascio signed the punch list to acknowledge receipt of all fifteen (15) pages.
 4. In March 2002, Cascio returned to perform some of the punch list items. On July 15, 2002, Cascio had Wood's Drywall return to the Simms' property and perform drywall touch ups. Between July 20, 2002 and July 24, 2002, Cascio had Knowles painting return to the Simms' property to paint.
 5. In August 2002, the Simms sent Cascio, via certified mail, a second punch list and requested Cascio complete the repairs by September 21, 2002. As of June 20, 2003, Cascio failed to return to make the repairs according to the punch list.
 6. The contract specified "All work is to be completed in a workmanlike manner according to standard practice."
 7. On October 11, 2002, at the request of the Simms, Byron J. Woods ("Woods"), Building Services of Central Virginia, inspected the workmanship of the home constructed by Cascio. In his report, Woods noted that the work was below any industry accepted standard. Woods' observations included, but are not limited to:
 - Exterior trim was very poorly installed.
 - Soffit vents were not properly installed and were falling out of position.
 - The garage slab does not have a proper apron to connect it to the asphalt driveway.
 - The screen porch has water leaking into the roof sheathing.
 - The foyer electrical receptacle is only hot when the dining room light is on.
 - The columns in the basement were not fastened to the overhead beam.
- Woods concluded that the "workmanship on these items listed did not meet standard installation practices, or building industry standards."
8. In March 2003, at the request of the Simms, Joseph L. Tomsic ("Tomsic"), Building Official for Bedford County Department of Building Inspection, inspected the home constructed by Cascio to address the quality of construction and building code violations. On April 28, 2003, Tomsic sent Cascio a Notice of Defective Work and noted the following building code violations:

- Roof not ventilated adequately, in violation of Section 806 of CABO.
- Windows and doors not sealed, in violation of Section 502.3.3 of MEC.
- Foundation penetrations not sealed, in violation of Section 502.3 MEC.
- Garage floor has combustible materials installed, in violation of Section 309.3 of CABO.
- Hand railing to second floor inadequate, in violation of Table 301.4 of CABO.
- Receptacles improperly wired in foyer and hallway, in violation of Section 210.52(a) of NEC.
- Ceiling height in second floor bathroom too low, in violation of Section 3051.2 Exception of CABO.
- Bathroom/shower walls too low on second floor, in violation of Section 702.4 of CABO.
- Recessed bathroom light fixture inadequately rated, in violation of Section 410-4(a) of NEC.
- Door bell not wired correctly per manufacturers instructions.
- Exterior trim not weather tight, in violation of Section 502.3.3 of MEC.
- Gas fireplace in Master Bedroom not installed properly, in violation of Section 1004.1 of CABO.
- Garage floor slopes in wrong direction, in violation of Section 309.3 of CABO.
- Rear deck out of level, in violation of Figure 403.1A Note 4 of CABO.
- Floor system for screened porch not adequate for load, in violation of Section 501.2 of CABO.
- Deck floor joist not properly bearing, in violation of Section 502.4 of CABO.

In addition to the building code violations, Tomsic noted the following poor workmanship:

- Chair molding in dining room is stained finger joint material. Finger joint material is used for painted surfaces.
- Trim throughout dwelling is poorly installed and misfit with gaps filled with wood putty and stained.
- Window trim misfit and gaps filled with putty and stained.
- Gypsum wall board poorly installed.
- White gutter down spouts installed over black shutters instead of being routed around them.
- Penetrations in gypsum board not patched or refinished. This is most prominent around plumbing fixtures.
- Screened porch door not properly hung to allow for swing.

9. In March 2003, at the request of the Simms, Joseph L. Tomsic ("Tomsic"), Building Official for Bedford County Department of Building Inspection, inspected the home constructed by Cascio to address the quality of construction and building code violations. On April 28, 2003, Tomsic sent Cascio a Notice of Defective Work and noted the following building code violations:

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- Foundation penetrations not sealed, in violation of Section 502.3 MEC.
- Garage floor has combustible materials installed, in violation of Section 309.3 of CABO.
- Hand railing to second floor inadequate, in violation of Table 301.4 of CABO.
- Receptacles improperly wired in foyer and hallway, in violation of Section 210.52(a) of NEC.
- Ceiling height in second floor bathroom too low, in violation of Section 3051.2 Exception of CABO.
- Bathroom/shower walls too low on second floor, in violation of Section 702.4 of CABO.
- Recessed bathroom light fixture inadequately rated, in violation of Section 410-4(a) of NEC.
- Door bell not wired correctly per manufacturers instructions.
- Exterior trim not weather tight, in violation of Section 502.3.3 of MEC.
- Gas fireplace in Master Bedroom not installed properly, in violation of Section 1004.1 of CABO.
- Garage floor slopes in wrong direction, in violation of Section 309.3 of CABO.
- Rear deck out of level, in violation of Figure 403.1A Note 4 of CABO.
- Floor system for screened porch not adequate for load, in violation of Section 501.2 of CABO.
- Deck floor joist not properly bearing, in violation of Section 502.4 of CABO.

Tomsic requested Cascio correct the defects within a reasonable time and have the work inspected again.

10. After receiving the Notice of Defective Work, Cascio met with Tomsic regarding the list of building code violations and areas of poor workmanship cited in the April 28, 2003, Notice of Defective Work.

11. On May 7, 2003, Cascio, Tomsic, and the Simms met to discuss the items to be corrected. Cascio agreed to complete the repairs within thirty (30) days. Cascio and the Simms verbally agreed to extend the deadline for completing the repairs to July 30, 2003. As of September 23, 2003, Cascio failed to make the corrections.

12. On September 23, 2003, Tomsic issued a Notice of Violation regarding the building code violations and poor workmanship. Tomsic requested Cascio correct the building code violations within ten (10) working days to avoid prosecution.

13. As of November 21, 2003, Cascio failed to abate the Notice of Violation.

The Board and William J Cascio, as evidenced by the signatures affixed below, enter into this Consent Order. William J Cascio knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

Further, by signing this Consent Order, William J Cascio acknowledges an understanding of the charges. William J Cascio hereby neither admits nor denies to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board, to avoid incurring the risks, expenses and inconveniences of a further contested resolution of this dispute:

Count I

A monetary penalty of \$250.00 for violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(8). In addition, Cascio agrees to take and successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order;

Count II

A monetary penalty of \$250.00 for violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(8) In addition, Cascio agrees to take and successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order;

Count III

Cascio is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(12). Additionally, Cascio agrees to complete the items on the attached "punch lists" that are not crossed through. Cascio agrees to begin this work prior to approval by the Board, at the Simms request. Completion of these items will be dependent upon Cascio having access to the Simms' property. Upon completion of the "punch list" items, a third party (acceptable to both Cascio and the Simms) will inspect and approve completion of such items. Cascio's failure to complete the "punch list" items within 90 days of the effective date of this order, for reasons within his control, will result in a monetary penalty of \$1,500.00 and revocation of Cascio's license;

Count IV

No monetary penalty for violation of the Board's 2003 Regulation 18 VAC 50-22-260(B)(25). Additionally, Cascio agrees to abate the building code violations according the September 23, 2003, notice of violation, except issues regarding the ceiling height as indicated in number 7 and the garage floor slope as indicated in number 13, within 90 days of the effective date of this order. If Cascio fails to abate the building code violations, a monetary penalty of \$250.00 and revocation of Cascio's license will be imposed.

The above monetary penalties, costs or sanctions are to be paid within thirty days of the effective date of this consent order. William J Cascio acknowledges the monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, William J Cascio will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

William J Cascio acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of William J Cascio's license until such time as there is compliance with all terms of this Order. William J Cascio understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

William J Cascio
t/a Cascio Construction

Date

CITY/COUNTY OF
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 2004.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2004.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of the Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: DEBRA M. BELEW
T/A CONSTRUCTION R US
LICENSE NUMBER 2705 053560

FILE NUMBER: 2003-01419**

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 6, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Debra M. Belew, t/a Construction R Us (Belew) on October 16, 2003. The following individuals participated at the conference: Debra M. Belew, Respondent; Ryan Emanuel, Complainant; Jack Rice, Witness; Jennifer Kazzie, Staff Member; Robert O. Burch, Jr., Presiding Board Member.

Background

On November 12, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Ryan and Cayce Emanuel ("the Emanuels") regarding a contract entered into with Debra M. Belew ("Belew"), t/a Construction R Us.

On or about July 22, 2002, the Emanuels entered into a contract with Belew, in the amount of \$2,475.00, to construct a retaining wall at 616 McIntire Road, Charlottesville, Virginia 22902.

On November 13, 2002, a review of the licensing records of the Board for Contractors revealed Belew was issued Class A Contractor's license number 270553560 on December 7, 1999, as a sole proprietor.

Summation of Facts

1. The contract used by Belew in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when work is to begin and the estimated completion date, (d) a "plain language" exculpatory clause, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, (h) the contractor's license number, expiration date, class of license/certificate, and classification or specialty services, and (i) a statement providing that any modification to the contract which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.
2. On or about July 22, 2002, the Emanuels paid Belew \$1,300.00 by check, as a down payment.
3. On or about the week of August 12, 2002, Belew commenced work on the wall. After August 12, 2002, Belew failed to return to complete the work contracted for, including the removal of the existing wall, and construction of the new wall. Between August 12, 2002, and October 15, 2002, the Emanuels contacted Belew regarding the work. Belew requested the Emanuels be patient and promised that she would return. As of October 15, 2002, Belew failed to complete the work and refuses to return the Emanuels telephone calls.
4. On or about October 21, 2002, the Emanuels sent Belew a letter requesting the return of the \$1,300.00 down payment received for the unfinished work. As of January 7, 2003, Belew failed to return the funds received for work not performed. The work performed by Belew was estimated to equal \$500.00.
5. The Emanuels hired another contractor to complete the wall for \$3,200.00.
6. Belew filed for bankruptcy in late October of 2002.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Belew's contract failed to contain the minimum provisions required by the Board's regulations, in violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of \$250.00 be imposed. In addition, I recommend Belew

successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Belew's failure to complete the work contracted for, is a violation of Board Regulation 18 VAC 50-22-260(B)(15) Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Belew's failure to return the funds received for work not performed, is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$1,000.00 and revocation of Belew's license be imposed.

By: _____

Robert O. Burch, Jr.
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 053560 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: JAMES DOLLINS
T/A LANDSCAPES UTILITIES UNLIMITED
LICENSE NUMBER 2705 039230**

FILE NUMBER: 2003-03039

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 6, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to James Dollins (Dollins) on October 16, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; Robert O. Burch, Jr., Presiding Board Member. Neither Dollins, nor anyone on his behalf, appeared at the IFF.

Background

On May 7, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from John Prinz ("Prinz") regarding a contract entered into with James Dollins ("Dollins"), t/a Landscapes Utilities Unlimited.

On November 9, 2002, Prinz entered into a contract with Dollins, in the amount of \$4,500.00, for the installation of a septic system at Independence Avenue. The septic system was for a new home being built at 26354 Indian Trace Trail, Unionville, Virginia.

Summation of Facts

1. The contract used by Dollins in the transaction failed to contain the minimum provisions required by the Board's 2001 18 VAC 50-22-260(B)(9), subsections (a) when the work is to begin and the estimated completion date, (c) a listing of specified materials and work to be performed, (d) a "plain language" exculpatory clause, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, and (h) the contractor's, license number, expiration date, class of license/certificate, and classification or specialty services.
2. On November 10, 2002, Prinz paid Dollins \$1,000.00 as a deposit.
3. As of January 22, 2003, Dollins failed to commence the contracted work. Between December 2002 and January 2003, Prinz called Dollins requesting Dollins return the funds received for work not performed.
4. On May 23, 2003, Dollins returned \$250.00 to Prinz by money order. As of June 25, 2003, Dollins failed to return the remaining funds received for work not performed.

5. On February 14, 2003, in the Orange County General District Court, Prinz was awarded a \$1,000.00 judgment against Dollins. As of June 24, 2003, Dollins failed to satisfy the judgment.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Dollins' contract failed to contain the minimum provisions required by the Board's regulations, in violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of \$300.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Dollins' failure to return the funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Dollins' failure to satisfy the judgment awarded to Prinz, is a violation of Board Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____

Robert O. Burch, Jr.
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 053560 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: DAVENDRA MERHAI
T/A D & N CONSTRUCTION
LICENSE NUMBER 2705 059872**

FILE NUMBER: 2003-01048

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 6, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Davendra Merhai, t/a D & N Construction (Merhai) on October 16, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Robert O. Burch, Jr., Presiding Board Member. Neither Merhai, nor anyone on his behalf, appeared at the IFF.

Background

On October 7, 2002, the Enforcement Division of the Virginia Department of Professional and Occupational Regulation received a written complaint from William Raymond (Raymond) regarding a contract entered into with Davendra Merhai (Merhai), t/a D & N Construction.

On January 22, 2002, Raymond received a written proposal from Merhai, in the amount of \$2,163.00, to perform work for an addition at 5118 Snead Road, Richmond, Virginia. On February 8, 2002, Raymond accepted the proposal and signed the contract. Merhai did not sign the contract.

Summation of Facts

1. On February 9, 2002, Raymond paid Merhai \$500.00 by check. In late February 2002, Merhai commenced work.
2. On March 26, 2002, Raymond paid Merhai \$1,000.00 by check. On April 9, 2002, Raymond paid Merhai \$177.38 by check.

3. Merhai failed to fully execute a written contract by not signing the contract prior to commencing work and accepting payments.

4. The contract used by Merhai in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when the work is to begin and the estimated completion date, (d) a "plain language" exculpatory clause, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, (h) the contractor's license number, expiration date, class of license/certificate, and classification or specialty services, and (i) a statement providing that any modification to the contract which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

5. On October 9, 2002, a review of the licensing records of the Board for Contractors revealed Merhai was issued Class C Contractor's license number 2705059872 on December 15, 2000, with the home improvement contracting (HIC) and commercial improvement contracting (CIC) specialties.

6. On January 22, 2003, Merhai told Investigator E. Nathan Matthews, the Board's agent, that Merhaia performed the rough-in electrical work in the new addition, including installation of wiring and electrical boxes.

7. In late February 2002, Merhai commenced work. As of January 22, 2003, Merhai failed to return to complete the following work on the new addition:

- Did not install 2 new windows,
- Did not drywall, tape and mud the new addition,
- Did not complete electrical work,
- Did not install the closet door, and
- Did not complete painting and trim work.

8. Merhai hired Terry Ragubeer to perform the rough-in electrical work for the new addition. Merhai failed to provide written change orders, signed by all parties, for changes to the scope of work specified in the contract.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective September 1, 2001)

Merhai's failure to fully execute a written contract by not signing the contract prior to commencing work and accepting payment is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$375.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Merhai's failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of \$300.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Merhai's actions of practicing in a classification, specialty service, or class of license for which the contractor is not licensed is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Merhai's failure to complete work contracted for is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: 18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Merhai's failure to obtain written change orders, signed by all parties, for changes to the scope of work specified in the contract is a violation of Board Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

By:

Robert O. Burch, Jr.
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL

RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 059872
UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: FREDERICK C. TAYLOR
T/A HEAVY'S
LICENSE NUMBER 2705 069055**

FILE NUMBER: 2003-02577

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 6, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Frederick C. Taylor, t/a Heavy's (Taylor) on October 17, 2003, and November 13, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; Robert O. Burch, Jr., Presiding Board Member. Neither Taylor, nor anyone on his behalf, appeared at the IFF.

Background

On March 24, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written from James and Zelma Hood (the Hoods) regarding a contract entered into with Sunny Sunrooms.

On March 7, 2002, the Hoods entered into a contract with Sunny Sunrooms, in the amount of \$50,000.00, to construct a room addition and renovation at 1765 Highland Drive, Gloucester, Virginia. On May 14, 2002, the Hoods paid Sunny Sunrooms \$30,000.00 by certified check.

Sunny Sunrooms, an unlicensed contractor, hired Frederick Taylor (Taylor), t/a Heavy's, as a subcontractor, to do the framing work at 1765 Highland Drive, Gloucester, Virginia. On June 12, 2002, Taylor obtained building permit number B-02-589 for work to be performed at 1765 Highland Drive, Gloucester Point, Virginia.

Summation of Facts

1. In August 2002, Sunny Sunrooms commenced work on the project. As of August 30, 2002, Sunny Sunrooms failed to return to complete the work.
2. In September 2002, Taylor began performing work at 1765 Highland Drive, Gloucester, Virginia. On September 10, 2002, the Hoods paid Taylor \$2,500.00 by check. On September 22, 2002, the Hoods paid Taylor \$600.00 by check. On September 24, 2002, the Hoods paid Taylor \$700.00 by check. On September 26, 2002, the Hoods paid Taylor \$2,500.00 by check. On October 4, 2002, the Hoods paid Taylor \$1,100.00 by check. On October 8, 2002, the Hoods paid Taylor \$850.00 by check. On October 18, 2002, the Hoods paid Taylor \$2,300.00 by check.
3. On March 24, 2003, a review of the licensing records for the Board for Contractors, revealed Frederick C. Taylor, t/a Heavy's, was issued Class C Contractor's license number 2705069055 on May 10, 2002.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(29) (Effective September 1, 2001)

Taylor's actions of contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services is a violation of Board Regulation 18 VAC 50-22-260(B)(29). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

By:

Robert O. Burch, Jr.
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 069055 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: FREDERICK C. TAYLOR
T/A HEAVY'S
LICENSE NUMBER 2705 069055**

FILE NUMBER: 2003-02565

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 6, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Frederick C. Taylor, t/a Heavy's (Taylor) on October 17, 2003, and November 13, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Robert O. Burch, Jr., Presiding Board Member. Neither Taylor, nor anyone on his behalf, appeared at the IFF.

Background

On March 21, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Carla N. Brown (Brown) regarding a contract entered into with Sunny Sunrooms.

On June 6, 2002, Brown entered into a contract with Sunny Sunrooms, in the amount of \$16,280.00, to construct a room addition at 316 Congress Avenue, Hampton, Virginia 23669. Fred Taylor signed the contract on behalf of Sunny Sunrooms. The contract specified contractor's license number 2705069055. On June 7, 2002, Brown paid Sunny Sunrooms \$10,000.00 by check.

On March 21, 2003, a review of the licensing records for the Board for Contractors, revealed Frederick C. Taylor (Taylor), t/a Heavy's, was issued Class C Contractor's license number 2705069055 on May 10, 2002. Sunny Sunrooms is not a licensed contractor.

On July 22, 2002, Taylor obtained building permit number B-02-0292 for work to be performed at 316 Congress Avenue, Hampton, Virginia.

Summation of Facts

1. In July 2002, work commenced. As of the end of August 2002, construction ended after the frame and foundation work was done.
2. On June 23, 2003, Taylor told Investigator Shelby Smith-Hill, the Board's agent, that both Sunny Sunrooms and Taylor performed work on the Brown project.
3. On November 14, 2002, in the Hampton General District Court, Brown was awarded a \$10,000.00 judgment against Fred C. Taylor, as owner of Sunny Sunrooms & More. As of June 11, 2003, Taylor failed to satisfy the judgment.
4. On June 23, 2003, Taylor told the Board's agent that he was not aware a judgment was issued against him relating to work performed at Brown's home. Taylor also told the Board's agent, "I will not satisfy a \$10,000.00 judgment. I will file bankruptcy first, in order to get out of paying the judgment."

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(29) (Effective September 1, 2001)

Taylor's actions of contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services is a violation of Board Regulation 18 VAC 50-22-260(B)(29). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Taylor's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

Robert O. Burch, Jr.
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 069055 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: EDDIE W. YATES
T/A E. W. YATES
LICENSE NUMBER 2701 020940**

FILE NUMBER: 2002-03801

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 6, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Eddie W. Yates, t/a E. W. Yates (Yates) on October 17, 2003. The following individuals participated at the conference: Eddie W. Yates, Respondent; Jennifer Kazzie, Staff Member; and Robert O. Burch, Jr., Presiding Board Member.

Background

On June 20, 2002, the Enforcement Division of the Professional and Occupational Regulation received a written complaint from Ernestine Rollins (Rollins) regarding a contract entered into with D. Mills Corporation.

On or about February 12, 2001, Ernestine Rollins (Rollins) entered into a contract with D. Mills Corporation, Builder, and E. W. Yates Construction, Contractor, in the amount of \$160,000.00, to construct a single family home on Lot 1 Napier Drive, Hanover, Virginia.

On July 17, 2002 and November 5, 2002, a review of the licensing records of the Board for Contractors revealed D. Mills Corporation (Mills) did not have a state contractor's license.

On November 13, 2002, a review of the licensing records of the Board for Contractors, revealed Eddie W Yates (Yates), t/a E W Yates, was issued Class A Contractor's license number 2701020940 on May 11, 1981, with the electrical contractor (ELE) and building contractor (BLD) classifications.

Summation of Facts

1. Yates failed to operate in the name in which the license was issued.
2. The contract specified Rollins pay Mills \$160,000.00. The contract further specified Yates "shall have the sole discretion to choose subcontractors and material sources to be used in the construction. . ."
3. On May 30, 2001, Hanover County Building Inspection Department issued building permit number 1237-01 for construction of a single family dwelling at Lot 1 Napier Drive, Hanover, Virginia. According to the permit, the contractor was E W Yates Electric, under license number 20940.
4. The Builder Qualifications form for Colonial Farm Credit, ACA showed the name of the builder's company as D. Mills Corporation and E W Yates Const. Co, with an address for Mills but the license number for Yates.
5. Yates allowed his license to be used by an unlicensed contractor.
6. Yates has been subcontracting with D. Mills Corporation previously. Yates was approached by a customer that wanted D. Mills Corporation to build their house. Yates entered into the contract with the understanding that D. Mills Corporation was in the process of obtaining a proper license. Yates did not discover that D. Mills Corporation was unlicensed until the customer had issues with D. Mills Corporation. D. Mills Corporation abandoned the job. At which point, Yates completed the job that was contracted for.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-230(A) (Effective May 1, 1999)

Yates failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of \$100.00 be imposed. In addition, I recommend Yates successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(14) (Effective May 1, 1999)

Yates actions in assisting an unlicensed/uncertified contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations is a violation of Board Regulation 18 VAC 50-22-260(B)(14). Therefore, I recommend a monetary penalty of \$500.00 be imposed. In addition, I recommend Yates successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-260(B)(15) (Effective May 1, 1999)

Yates actions in allowing a firm's license to be used by an unlicensed contractor is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of \$500.00 be imposed. In addition, I recommend Yates successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Robert O. Burch, Jr.
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2701 020940 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: DAVID W. MAY, SR.
T/A VIRGINIA REMODELING
LICENSE NUMBER 2705 042265**

FILE NUMBER: 2003-00050

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 6, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to David W. May, Sr., t/a Virginia Remodeling (May) on October 21, 2003. The following individuals participated at the conference: David W. May, Sr., Respondent; Jennifer Kazzie, Staff Member; and Robert O. Burch, Jr., Presiding Board Member.

Background

On or about April 1, 2002, Dyan Cooper (Cooper) entered into a written contract with "Virginia Remodeling Sunrooms," in the amount of \$1,747.84, to install a sliding glass door at 1925 Creek Bottom Way, Richmond, Virginia.

Summation of Facts

1. The contract used by David W. May Sr. (May), t/a Virginia Remodeling, in the transaction reflected the name "Virginia Remodeling Sunrooms." The invoice dated April 2, 2002, and credit memo dated May 21, 2002, used by May reflected the name "Virginia Remodeling Inc."
2. On October 9, 2002, a review of the licensing records of the Board for Contractors, revealed David W. May Sr., t/a Virginia Remodeling, was issued Class B contractor's license number 2705042265 as a sole proprietorship on November 3, 1997.
3. May failed to operate in the name in which the license was issued.
4. The invoice dated April 2, 2002, and credit memo dated May 21, 2002 used by May reflected the name of "Virginia Remodeling Inc."
5. On or about October 9, 2002, a review of the records from the State Corporation Commission revealed Virginia Remodeling Inc. has been an active corporation since August 27, 1999.
6. May failed to apply for a new license within thirty (30) days of the change in the business entity.

7. The contract used by May in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when the work is to begin and the estimated completion date, (b) a plain language exculpatory clause, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (h) the contractor's expiration date, class of license/certificate and classification or specialty services.

8. May failed to make use of a legible written contract that contains all provisions specified in the regulation.

9. During the IFF, May testified that he has made application for a new license and he presented evidence that indicated the application is pending for the corporation.

10. During the IFF, May presented a revised contract.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-230(A) (Effective September 1, 2001)

May's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of \$350.00 be imposed. In addition, I recommend May successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-210(3) (Effective September 1, 2001)

May's failure to apply for a new license within thirty (30) days of the change in the business entity is a violation of Board Regulation 18 VAC 50-22-210(3). Therefore, I recommend a monetary penalty of \$100.00 be imposed. In addition, I recommend May successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

May's failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of \$50.00 be imposed. In addition, I recommend May successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Robert O. Burch, Jr.
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 042265 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION RECOVERY
ACT CLAIM OF WILLIAM H. ANDERSON AND KIM L. ANDERSON
(CLAIMANTS) AND WEATHER GUARD CONSTRUCTION, INC. T/A WEATHER
GUARD CONSTRUCTION, INC. (REGULANT)**

LICENSE NUMBER 2705 053770

FILE NUMBER: 2003-01855

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 6, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mr. and Mrs. Anderson, and Weather Guard Construction, Inc. on November 18, 2003. The following individuals participated at the conference: William H. Anderson, Claimant; Jennifer Kazzie, Staff Member; and Robert O. Burch, Jr., Presiding Board Member. No one from Weather Guard Construction, Inc. appeared at the IFF in person or by counsel.

Background

On **March 5, 2002**, in Prince William General District Court, William H. Anderson & Kim L. Anderson obtained a **Judgment** against Leon Zajdel and James Brooking, **in the amount of \$1,468.68, plus interest and \$61.00 costs.** (note: On the Warrant in Debt in the Case Disposition the block designated "**No-Suit**" has been marked and "**Weatherguard**" has been included.)

The **claim** in the amount of **\$1,596.68** was received by the Department of Professional and Occupational Regulation on **January 2, 2003.**

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis for the suit. The block designated "Contract" has been marked.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class A License Number 2705053770 to Weather Guard Construction, Inc., t/a Weather Guard Construction, Inc., on **February 11, 2000**. The license was permanently revoked on **July 19, 2002**. The Board for Contractors licensing record lists the Responsible Management as L. Zajdel, President and J. Brooking, Vice President. The Designated Employee and Qualified Individual on the licensing record is L. Zajdel. The claimants entered into a written contract with Weather Guard Construction, Inc., **July 9, 2001** for exterior home improvements at the claimants' residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **March 5, 2002**. The claim was received on **January 2, 2003**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with Weather Guard Construction, Inc., for exterior home improvements at the claimants' residence.

7. Code of Virginia Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. Code of Virginia Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. Code of Virginia Section 54.1-1120(A)(7) states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis for the suit. The block designated "Contract" has been marked.

In the Affidavit of Facts dated **October 12, 2002**, the claimants assert the regulant received funds for the purchase and installation of a door and mantle piece at the claimants' residence. During the installation of the door the regulant discovered that the jamb size was incorrect. The regulant suggested that the necessary modifications should be made to the door jamb area so that the installation could be completed. The claimants rejected the regulants offer and requested that factory ordered door jamb be installed as the claimants previously contracted and paid for.

The regulant has never return to complete the project or returned the claimants' money.

10. Code of Virginia Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. Code of Virginia Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

The warrant in debt could not be served on Weather Guard; therefore, the case against Weather Guard was non suited. Although the judgment was not obtained against Weather Guard, the judgment was obtained against Leon Zajdel and James Brooking, who are the responsible management for Weather Guard. Therefore, based upon the record and information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$1,596.68.

By:

Robert O. Burch, Jr.
Presiding IFF Board Member
Board for Contractors
Date:

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 053770 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.